

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DAVID BEASLEY

Plaintiff

V

WILLIAM HOWARD

Defendant

Civil Action No. 1:19-cv-11058

JBS-KMW

**MOTION FOR SUMMARY JUDGEMENT
PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 56**

Clerk, U.S. District Court
Mitchell H. Cohen Building
U.S. Courthouse 4th and Cooper Sts.
Camden, NJ 08101
Honorable Jerome B. Simandle, U.S.D.J.
Honorable Karen M Williams U.S.M.J.

PLEASE TAKE NOTICE of motion for Summary Judgement
pursuant to Federal Rule of Civil Procedure 56.

/s/ David Beasley
David Beasley Plaintiff Pro-Se

July 29, 2019

CLERK
U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY
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HERE COMES PLAINTIFF in motion for Summary Judgement pursuant to Federal Rule of Civil Procedure 56. Plaintiff relies on undisputed material facts, matter of law and attached appendix.

/s/ 
David Beasley Plaintiff Pro-Se

CITED STATUTES

**SUMMARY JUDGEMENT FEDERAL RULE OF CIVIL
PROCEDURE 56**

LANHAM ACT 15 USC§1125 SECTION 43 and SECTION 43(a)

July 8, 2019

AFFIDAVIT

I am David Beasley and I am the founder and creator of the singing group named the Ebonys.

I created and found this group and name in 1969 in Camden NJ.


I recorded the two hit songs on the Philadelphia International Records Label for Kenneth Gamble and Leon Huff of the Hall of Fame writing team of Gamble and Huff.

Our geographic location is Camden NJ and the Philadelphia PA.

Venues that have been hiring myself and my group the Ebonys are canceling appearances, performance jobs and award ceremonies after fifty years of service.

I am being blocked from receiving hall of fame recognition because cease and desist letters have been sent to interrupt my lifetime achievements.

Some of my music royalty payments from SoundExchange and other music royalty and streaming networks have been interrupted and intercepted by the defendant.

/s/  _____

David Beasley Plaintiff Pro-Se

MEMORANDUM OF LAW

Pursuant to Federal Rules of Civil Procedure 56 Summary Judgement.... The court shall grant **summary judgement** if the movant shows that there is **no genuine dispute as to any material fact** and the movant is entitled to **judgement as a matter of law**.

It is an undisputed material fact that the plaintiff David Beasley created a singing group named the Ebonys in Camden ,NJ January 1, 1969. There is no dispute as to this fact.

There is no genuine dispute that the plaintiff's Ebonys singing group name was an unregistered trademark protected under the Lanham Act 15 USC §1125 Section 43 and Section 43(a). And as a matter of law the plaintiff is entitled to judgement to abrogate the defendant's subsequent USPTO Ebonys trademark.

There is **no material facts in dispute** and **summary judgement is appropriate**. Attached appendix substantiates all the material facts that are absolutely not in dispute. And can not be disputed.

It is an undisputed fact that the defendant illegally intercepted monetary music royalties and payments that belonged to the plaintiff. Theft of music royalties defendant knew belonged to the plaintiff. And plaintiff is entitled to monetary summary judgement as matter of law.

It is an undisputed fact that the plaintiff's singing group the Ebonys recorded the first hit record on Philadelphia International Records for the Hall and fame writers Gamble and Huff.

It is an undisputed fact that the plaintiff and his Ebonys singing group have been performing and selling records continuously for over fifty years.

It is an undisputed fact that the plaintiff who owned the Ebonys singing group temporarily employed the defendant to sing in the group.

It is an undisputed fact that the defendant after leaving the plaintiff's singing group the Ebonys. Went out and formed his own singing group and named that group the Ebonys also.

It is an undisputed fact that the plaintiff already had first use of the Ebonys name in commerce. And had unregistered trademark protection under section 43(a) of the Lanham Act. Therefore the USPTO and TTAB made a mistake in registering to the defendant an already protected Ebonys trademark. And the defendant's Ebonys trademark **must be abrogated as a matter of law.**

These material and significant facts cannot be disputed. The plaintiff proves there are no facts in dispute. And summary judgement for the plaintiff is justified as a matter of law.

PLAINTIFF IS ENTITLED TO SUMMARY JUDGEMENT FOR MONETARY DAMAGES OF FIVE HUNDRED THOUSAND DOLLARS AND ABROGATION OF DEFENDANT'S EBONYS TRADEMARK.

As a matter of law plaintiff is entitled to judgement for monetary damages in the amount of five hundred thousand dollars. which is a minor amount in comparison to the monetary damages caused the plaintiff by the defendant for just the theft of royalties owed the plaintiff that defendant illegally obtained and attempted to obtain from Sound Exchange and other music streaming channels for music and recordings that were not recorded, published or written by Defendant.

It is an undisputed material fact that the defendant committed theft by deception. Defendant stole and collected monetary royalty payments owed to plaintiff and his Ebonys singing group. Defendant has allegedly vowed to return some of the payments attempting to subvert any possible criminal charges.

. There is no dispute the singing group name Ebonys is the plaintiff's already unregistered trademark protected name under section 43(a) of the Lanham Act. Therefore the defendant's USPTO trademark must be abrogated.

It is a material fact that plaintiff's unregistered trademark Ebonys name was already protected under section 43 and 43(a) of the Lanham act. The Ebonys have been worldly known and Icons in their hometown Camden, NJ and Philadelphia PA. Highly celebrated in their geographic area and other areas of the world every year. With their recordings, appearances, performances, fundraisings, community service affairs and award ceremonies all over the world.

Plaintiff's first use in commerce of his singing group the Ebonys was January 1, 1969 and every year there after.

June 25, 2014 the Plaintiff David Beasley and the Ebonys were presented with the Philadelphia Phillies Gamble & Huff Community Partnership Award for their years of commitment to the music industry and the city of Philadelphia.

There is protection of an unregistered Ebonys trademark for the plaintiff. Here a mistake has been made and defendant's trademark must be abrogated to correct the mistake.

The Ebony's was created and founded by plaintiff in the state of New Jersey in the year of 1969. Giving plaintiff priority use . The plaintiff's singing group the Ebonys have for over five decades entertained and committed themselves to community and government functions.

USTPO erred," MADE A MISTAKE" and issued an Ebony's singing group trademark to defendant when there was already an unregistered Ebony's singing group trademark in existence for over fifty years and protected under section 43(a) of the Lanham Act.

Therefore this US District Court must “RECTIFY THE MISTAKE” and abrogate defendant’s Ebony’s singing group trademark which cannot take precedence over the plaintiff’s already established Ebony’s singing group trademark.

An unregistered trademark (also known as a common law trademark) is protected under Section 43 of Trademark (Lanham Act (15 USC § 1125).

”

The USPTO and TTAB made a mistake and could never have jurisdiction to resolve this matter correctly and in its totality.

Not only has the defendant committed theft by deception from Sound Exchange and other streaming and royalty networks. He also committed and is still committing Theft by Deception from venues where he has lead them to believe his group of Ebonys is the same group of Ebonys created and founded in 1969 in Camden NJ by David Beasley and recorded the hit records” It’s Forever” and “You are The Reason Why” on Philadelphia International Records with Gamble and Huff.

After 35 years of performances in their hometown of Camden New Jersey’s Unity Community Center. The center and other venues Have now cancelled their appearances and performances after receiving cease and desist letters from the defendant. Causing the plaintiff and his group to lose thousands and thousands of dollars from this. Along with the stolen royalties by the defendant. Plaintiff has and is now still losing large amounts of income from future, previous and present endorsements and jobs and that of royalties not yet received because of defendant’s attempt to illegally obtain the plaintiff’s royalties.

Plaintiff’s unregistered and popular Ebonys trademark protection (also known as common law trademark) which is and has always been protected under section 43(a) of Trademark (Lanham Act (15 USC §1125) now presently protected and was protected at the time defendant filed and obtained a USPTO trademark for the same identical group name. A mistake was made and rectification of the mistake is abrogation

of defendant's Ebonys trademark that was already first and foremost protected and securely owned by the plaintiff pursuant to the Lanham Act 15 USC § 1125 under section 43(a).

The USPTO have been proliferating registered trademark confusion by accepting applications, processing them and "MAKING MISTAKES" by issuing registered trademarks to consumer popular unregistered trademarks that are already protected under section 43 of Trademark (Lanham Act 15 USC§1125).

These Common Law Rights are enforceable in every state of America under the Fourteenth Amendment to the United State's Constitution's Due Process Clause and Equal Protection Under The Law. A trademark attorney investigates, allegedly to see if the registration of a trademark is likely to cause any confusion to an already consumer friendly common law known and friendly popular unregistered trademark.

David Beasley and The Ebonys have always ben a very popular and well known unregistered trademark singing group.. Any trademark to a subsequent group of Ebonys infringes on the plaintiff and his established group of Ebonys already protected under the Lanham Act section 43(a).

Unregistered Trademarks 15 USC§1125(a) creates a civil cause of action for claims of false designation of origin and false advertising. This provides federal protection for unregistered marks. Marks not registered with the United States Patent and Trademark Office (USPTO) but may be protected at the state level by common law or statutes associated with unfair competition.

The objective of the Lanham Act section 43(a) is to also protect unregistered trademarks..The plaintiff's geographical area is Camden NJ and Philadelphia PA. Plaintiff maintains protection under the federal (Lanham Act) which includes prohibition against commercial misrepresentation of source or origins of goods.

Precisely under 15 USC 1125 (Section 43 of The Lanham Act): False Designations of Origin, False Descriptions, and Dilution Forbidden. Therefore with this section of the Lanham Act it was forbidden for the defendant to file for registration of an unregistered trademark and give a FALSE DESCRIPTION of the members of the group and the DESIGNATIONS OF ORIGIN of the group. And the USPTO attorneys failed to prevent this particular cause of action by permitting DILUTION FORBIDDEN registration of an unregistered trademark.

All of the entertainment and music world in the United States of America knows The Ebonys (Designation of Origin) is Camden NJ where birth and creation of the Ebonys took place in 1969 by the plaintiff David Beasley.

CONCLUSION

As a matter of law, the plaintiff is entitled to damages of five hundred thousand dollars resulting in defendant's theft of royalties from Sound Exchange and other streaming networks. Also from venues that received cease and desist letters from defendant cancelling plaintiff's jobs in his geographic region after decades of performing.

Defendant's registered Ebony's name singing group trademark. **must be ABROGATED** by this court. **A MISTAKE WAS MADE.** The trademark name was issued by the USPTO in violation of an UNREGISTERED Ebonys trademark name that was well established and publicly very popular and **already protected under federal trademark law section 43 and 43(a) of the Lanham act. (15 USC §1125; section 43 and 43(a).**

July 29, 2019

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DAVID BEASLEY

Plaintiff

V

WILLIAM HOWARD

Defendant

Civil Action No. 1:19-cv-11058-

JBS-KMW

ORDER

It is upon this day _____ 2019 that the plaintiff's
motion for Summary Judgement pursuant to Federal Rule of Civil
Procedure 56, is hereby,

Granted _____. Denied _____.

/s/ _____

USDJ

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CERTIFICATION OF SERVICE

**Civil Action No. 1:19-cv-11058-
JBS-KMW**

I do hereby certify that I have delivered a copy to all of the listed parties and courtesy copy to Honorable Judge Jerome Simandle USDJ and Honorable Karen M Williams USMJ.

Clerk United States District Court
U.S. Courthouse 4th and Cooper Streets
Camden NJ 08101

Frank A. Natoli
Natoli -Legal, LLC
305 Broadway, 7th Floor
New York, New York 10007

Moshe D.Lapin
Lapin Law Firm
300 E. Lombard Street
Suite 840
Baltimore, MD 21202

Attorneys for the Defendant William Howard

Dated July 29, 2019

/s/ 

David Beasley-Plaintiff -Pro-Se

I, THE TREASURER THE STATE OF NEW JERSEY, DO HEREBY
CERTIFY THAT

DAVID S. BEASLEY
1801 LAUREL ROAD - UNIT 612
LINDENWOOD NJ 08021

DID ON THE 7TH DAY OF MARCH A.D. 2003 FILE IN THIS
DEPARTMENT

SERVICE MARK
MARK REG NUM : 21286

THE EBONYS
ENTERTAINMENT/SINGING GROUP

CLASSIFICATION GROUP : SERVICES
CLASS : 041 EDUCATION AND ENTERTAINMENT

RENEWAL DATE: 03/08/2018
EXPIRATION DATE: 03/07/2023
DATE OF FIRST USE IN NEW JERSEY: 01/01/1969
DATE IN USE ELSEWHERE: 01/01/1969

AS BY THE STATUTES OF THIS STATE REQUIRED.



IN TESTIMONY WHEREOF, I HAVE
HEREUNTO SET MY HAND AND AFFIXED
MY OFFICIAL SEAL AT TRENTON, THIS
8TH DAY OF MARCH
A.D. 2018 .

A handwritten signature in cursive script, appearing to read "Elizabeth Maher Muoio".

Elizabeth Maher Muoio
Acting State Treasurer

Certificate Number: 140333044

Verify this certificate online at

http://www1.state.nj.us/TYTR_StandingCert/JSP/Verify_Cert.jsp

6/16/2019

Gmail - Fwd: SoundExchange Overlapping Artist Claim: THE EBONYS ref:_00D301FiR0._50013tm4Kk:ref - RESPONSE FROM JOHN LUONGO o...



John Luongo <luongo.john@gmail.com>

**Fwd: SoundExchange Overlapping Artist Claim: THE EBONYS
ref:_00D301FiR0._50013tm4Kk:ref - RESPONSE FROM JOHN LUONGO obo Clarence
E. Vaughn (6-15-16) - FYI**

John Luongo <luongo.john@gmail.com>
To: Clarence Vaughn <jingles1951@gmail.com>

Thu, Jun 16, 2016 at 1:22 PM

Good Morning Clarence,

Just as an FYI, here is the email which I sent to the party claiming all digital performance royalties from Ebony's.

I am awaiting a response and am optimistic that I will get justice for you.

Kind regards,

John

John P. Luongo

**John Luongo President/CEO - Trecter Entertainment, LLC.
A division of John Luongo Management Recordings, LLC.
Exclusive Worldwide Licensing Representative/ Royalty Recovery**

Mobile: 1-917-213-1699

Email: Luongo.john@gmail.com

Twitter: Luongojohn

Skype: Johnluongo

----- Forwarded message -----

From: **John Luongo** <luongo.john@gmail.com>

Date: Wed, Jun 15, 2016 at 1:25 PM

Subject: Re: SoundExchange Overlapping Artist Claim: THE EBONYS ref:_00D301FiR0._50013tm4Kk:ref - RESPONSE FROM JOHN LUONGO obo Clarence E. Vaughn (6-15-16)

To: "williamsSmokehoward@comcast.net" <williamsSmokehoward@comcast.net>

Cc: Brandon Kyker

Dear Mr. Howard,

I on Friday June 10, 2016 you received notification that we are challenging your claim to collect any of the digital performance royalties distributed by SoundExchange.

As of this date, you have failed to reply and have now been informed that SoundExchange has stopped all royalty disbursements on this account until this issue is resolved.

I have in my possession the original recording contract for the Ebonys and all parties who are legally entitled to the SoundExchange Digital Performance Royalties for that group. You appear nowhere on that document and have no legal rights to collect as you have been doing.

You are hereby notified, if this is not resolved in the amicable manner which I and my client would prefer, you will leave me with no option but to pursue all legal actions to protect the rights of my client and seek any damages and payments due to him.

I highly suggest you address this serious issue in an expedited manner and respond with an emailed notification to Brandon Kyker of SoundExchange, who is here copied, and myself stating that you have dropped any and all claims you have previously made to the Repertoire of the Ebonys.

I await your immediately response.

6/16/2019 Gmail - Fwd: SoundExchange Overlapping Artist Claim: THE EBONY'S ref:_00D301FiR0_50013tm4Kk:ref - RESPONSE FROM JOHN LUONGO o...

Kind regards,

John

John P. Luongo

**John Luongo President/CEO - Trecter Entertainment, LLC.
A division of John Luongo Management Recordings, LLC.
Exclusive Worldwide Licensing Representative/ Royalty Recovery**

Mobile: 1-917-213-1699

Email: Luongo.john@gmail.com

Twitter: Luongojohn

Skype: Johnluongo

On Fri, Jun 10, 2016 at 2:45 PM, John Luongo <luongo.john@gmail.com> wrote:

Dear William,

As the legal representative of Clarence E. Vaughn, of the Ebony's, I hereby attest to the fact that he is a legitimate Featured Artist and original member of the band, holding a legal right to his claim of 25% of the digital performance royalties.

Furthermore, only the following members of said band, the Ebonys, are entitled to receive a percentage in equal shares of 25%:

Clarence E. Vaughn

James Tutten

Ms. Jennifer Holmes

David Beasley

The parties above are all legally entitled to their rightful share of the Featured Artist Digital Performance Royalties and anyone outside of these individuals attempting to collect, make a claim or representing they are entitled to a Featured Artist Digital Performance Royalty is making a false claim which has serious consequences involved.

It is my intention to resolve this matter amicably, but for that to be the case, I demand all rights of claim to be immediately dropped and a notification sent to Brandon Kyker of SoundExchange, here copied by return email to that effect.

Additionally arrangements must be made for all monies erroneously collected from SoundExchange, starting from the inception of the account up to the last payment received, to be immediately returned so it may be rightfully distributed amongst the verified legal claimants.

I look forward to hearing from and hope that we can resolve this serious matter in the easiest and least disruptive manner possible. My number and email are included to expedite the matter.

Kind regards,

John

John P. Luongo

**John Luongo President/CEO - Trecter Entertainment, LLC.
A division of John Luongo Management Recordings, LLC.
Exclusive Worldwide Licensing Representative/ Royalty Recovery**

Mobile: 1-917-213-1699

Email: Luongo.john@gmail.com

Twitter: Luongojohn

Skype: Johnluongo

(4)



May 20, 2010

The Ebonys
c/o David Beasley
1801 Laurel Road
Lindenwold, NJ 08021

Re: Royalty Statement for PE 12/31/09

Mr. Beasley,

Enclosed please find the most current Ebonys Royalty Statement for ***Period Ending December 31, 2009*** for The Ebonys. Thank you for providing us the necessary contact information needed for future Ebonys royalty statements. Pursuant to our email and phone correspondence, it is our understanding that you are an official and legal representative of the group and are authorized to receive information on the group's behalf.

For any further questions, please give us a call at (215) 985-0900.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles B. Gamble".

Charles B. Gamble
Executive Vice President
Philadelphia International Records

Cc: Royalty Administration

